

Greece

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Greece

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Introduction

Intellectual and Industrial Property Rights

In General

GRE1 Creators of intellectual property works, upon the creation of their works, acquire the right of their copyright, including the exclusive and absolute economic and moral rights which are basically protected by Law Number 2121/1993 on Copyright, Related Rights Matters, and Cultural Issues.

GRE2 Within the framework of Law Number 2121/1993, the term ‘work’ designates any original intellectual literary, artistic, or scientific creation, expressed in any form, notably written or oral texts, including drawings, works of painting and sculpture, engravings and lithographs, works of architecture and photographs, works of applied art, illustrations, maps, and three-dimensional works relative to geography, topography, architecture, or science.

GRE3 Computer software and databases, ie, collections of independent works, data, or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means by reason of the selection or arrangement of their contents, also are protected within the meaning of the term ‘work’.

GRE4 However, inventions, industrial designs and models, and technological innovations in general, are not contained within the meaning of the term ‘work’, as defined in Law Number 2121/1993. Creators and/or inventors of such industrial property works, according to Law Number 1733/1987 on Technology Transfer, Inventions, and Technological Innovation, upon the registration of

their works with the competent authorities acquire exclusive and absolute economic and moral rights upon them.

GRE5 Furthermore, according to Law Number 2239/1994 on Trade Marks, upon the registration of a trade mark with the competent authority, its owner acquires rights upon them.

GRE6 An economic right is the right to exploit the work, whereas a moral right is the right to protect the personal connection of the creator, inventor, and/or owner with the object of the industrial property right.

Economic Right

GRE7 The economic right includes the right to authorise or prohibit:

- Reproduction and/or use by any means and in any form, in whole or in part;
- Translation, arrangement, adaptation, or any other alteration;
- Application, offering, or making available in the market the work and/or the process protected by the patent,
- Distribution in any form by sale or otherwise;
- Rental or public lending; and
- Industrial application and exploitation.

Moral Right

GRE8 A moral right, which is independent from the economic right and remains with the creator, inventor, and/or owner, even after the transfer of the economic right, gives the creator the powers to:

- Decide the time, place, and manner in which the work will be made accessible to the public (publication);
- Demand that the identity of the creator and/or inventor of the work be acknowledged and, in particular, to the extent that it is possible, that his name appears on any copy of his work;
- Prohibit any distortion, mutilation, or other modification of his work, and any offence to the creator and/or inventor due to the circumstances while presenting the work in public; and
- Have access to his work and/or invention, even when the economic right on the work or the physical embodiment of the work belongs to another person (access must be effected with the minimum possible nuisance to the right holder).

Duration of Protection

GRE9 Rights relating to intellectual property works will last for the duration of the creator's lifetime and for 70 years after his death.

GRE10 According to Law Number 1733/1987, rights related to industrial property works will last for 20 years, starting from the registration of the work with the competent authority. Under Law Number 2239/1994, rights over a trade mark last for 10 years, starting from their registration with the competent authority.

Exploitation of Rights

GRE11 Even though moral rights are not transferable between living persons, it is possible for the economic right to be transferred between living persons or *mortis causa*. Moreover, assignment of the exploitation of the economic right also is possible.

Transfer and Exploitation Contracts and Licences

GRE12 The exploitation of a right may be performed by the creator, investor, and/or owner, or by third parties. A third party may exploit a right either as its owner or as assignee of its exploitation. More specifically, the following forms of agreements may be concluded:

- Transfer or sale contract, by which a transfer of an economic right is made;
- Full exploitation contract, by which an economic right is entrusted to another party; and
- Exploitation license, by which a person is authorised to exercise an economic right.

GRE13 By virtue of such an agreement, the creator, inventor, and/or owner, in exchange for a consideration, transfers his right or assigns its exploitation.

GRE14 Under Greek law, such exploitation agreements are provided by article 16 of Law Number 2239/1994, article 13 of Law Number 2121/1993, and article 12 of Law Number 1733/1987.

GRE15 According to these provisions, by such an agreement, a contracting party may be entrusted with the economic right (exploitation contract) or may

be authorised to exercise such an economic right (exploitation licence). The key elements of such an agreement are that it be:

- Typical, meaning that such an agreement shall be null and void, unless concluded in writing;¹
- Of a duration not exceeding the right's protection period; and
- Restrictive of competition between the contracting parties, with respect to the territory and the exploitation period.

GRE16 The terms of such an agreement may be freely agreed by the parties. However, attention must be paid to European Union (EU) Regulations and Directives (Regulation 240/96, Directive 1991/250/EC, and Directive 1989/104/EC) and domestic antitrust law to assure that the agreement does not restrict competition in the relevant market.

GRE17 The agreements may be either of an exclusive or of a non-exclusive nature. Exclusive exploitation contracts and licences empower the other contracting party to exclusively exercise the rights conferred upon it by the contract or license, excluding the creator, inventor, and/or owner or any third person of the exercise of such rights.

GRE18 There are, however, exclusive contracts by which the creator/inventor and/or owner withholds his rights and is allowed to compete with his contracting party in the same designated territory.

GRE19 Non-exclusive exploitation contracts and licenses give the right to the other contracting party to exercise the rights conferred upon it by the contract or licence in parallel with the creator/inventor and/or owner and other parties.

GRE20 The exclusive or non-exclusive nature of the contract may be agreed with regard to a designated territory, to a specific duration period, and/or to specific means of exploitation. Usually, a contract is designed to be exclusive for manufacturing, and non-exclusive for sales purposes.

GRE21 All above contracts and licences may include restrictions regarding their scope, duration, and geographical application, and the extent or the means of such exploitation.

¹ Nullity may be invoked only by the creator, inventor, and/or owner.

Interpretation of Licensing Agreements

GRE22 The general rules on contracts, especially article 361 of the Civil Code, apply to the abovementioned agreements. Among the necessary prerequisites are the following:

- Agreement of the parties for the transfer or assignment;
- Consideration and/or method of its computation;
- Subject matter of the agreement, including the extent of the assigned rights; and
- Form (deed).

GRE23 The parties to a licensing agreement are free to choose the terms and conditions they deem appropriate, with the exceptions and limitations required by the general Greek contracts law and EU and domestic antitrust laws.

GRE24 The Civil Code is based on the concept that all terms and elements not mentioned expressly in the agreement by the parties, but which, however, are required for the contract to be an effective and enforceable one, will be presumed as included by operation of law.

GRE25 Where a doubt exists as to the exclusivity of an agreement, such an agreement shall be deemed to be a non-exclusive one. Moreover, under the condition that an agreement to the contrary is not in force, the other contracting party will be entitled to seek in his own name legal protection against illegal infringements by third parties of the rights he contractually exercises.

GRE26 The contract or licence may in no circumstance be deemed as transferring any overall right over the future works of the creator, and may never be deemed as referring also to forms of exploitation that were unknown on the date of conclusion of the contract.

GRE27 The rights of a person who undertakes to carry out the exploitation of a work, or who acquires the right of its exploitation, may not be transferred between living persons without the consent of the creator/licensor.

GRE28 If the duration of the transfer or of the exploitation contract or license is unspecified, its duration will be deemed to be limited to five years, provided that contractual mores do not indicate otherwise.

GRE29 If the geographical application of the transfer or of the exploitation contract or license is unspecified, the relevant laws of the country where such contracts were concluded shall apply.

GRE30 If the extent and the means of exploitation of a certain transfer or the exploitation or the exploitation licence agreed are unspecified, it will be deemed that the laws mentioned above also refer to the extent and the means necessary for the fulfillment of the purpose of the contract or license.

Procedural Requirements

GRE31 Registration of the agreement will be necessary to establish the right against third parties and as a primary evidence of the existence of the agreement.

Licensing of Patent Rights and Utility Models

Nature, Definition, and Legislation

GRE32 In Greece, patent and utility model rights are basically governed by Law Number 1733/1987, as amended. Licensing of patent rights can be defined as the contract by which the patent or utility model holder grants to others the right to dispose of the invention in exchange for a consideration, without transferring its ownership. There are two kinds of licenses, namely:

- Technology licenses referring to know-how for the manufacture of technology products; and
- Patent licenses referring to patents.

Territorial Scope

GRE33 The licensing of a patent right has a territorial extension and scope limited to the territory of the country where same has been registered. International conventions and laws of organisations like the European Union (EU), however, may expand or reduce the rights of a national patent.

GRE34 The so-called ‘priority right’, benefiting the patent applications filed with the competent authority, is an example of extension of patent rights outside Greece, as well as the possibility for a patent applicant of one of the member states of the EU to file the patent application in any other EU member state within one year of the first application, with a priority in that second state established by the first application’s date of filing.

GRE35 The European Community principle of exhaustion of the patent, pursuant to which the patent holder in one of the EU member states using his exclusive right on the patent cannot prohibit someone else from importing a product that has been introduced in the market by the same patent holder, or with his consent, in another member state, is an example of restriction of the patent rights within the borders of a single country.

Term

GRE36 The duration of a licensing agreement is left to the parties' privilege. It is common practice to link the duration of a contract with the term of expiration of the patent. Article 11 of Law Number 1733/1987 provides for a 20-year duration from the date on which the patent application is made publicly known by means of its publication in the *Patent Bulletin*.

GRE37 In the absence of any express provision in the licensing agreement on its duration, the current trend is to consider the expiration date of the patent's validity as the expiration date of the agreement.

Rights of Licensor

GRE38 As in any bilateral contract, the licensor, in agreement with the licensee, may determine all the clauses, limitations, and extensions deemed to be appropriate. Limits on the parties' discretion may only be found in the general principles of contractual law provided for in the Civil Code¹ and in EU legislation, as in Regulation EC 772/2004.

GRE39 In general, the licensor has the right to seek consideration when granting an exclusive or non-exclusive use of a patent to a licensee. The licensor also is entitled to protect the patent, directly or indirectly, against any and all infringements and to ensure that the licensee executes all the terms of their agreement, such as not expanding his operation in another licensee's (or, indeed, in the licensor's) exclusive territory, either by manufacturing or by marketing products outside the designated area. Moreover, the licensor is protected by virtue of Law Number 146/1914 on Unfair Competition.

¹ Civil Code, arts 361 *et seq.*

Obligations of Licensor

GRE40 Some elements of a lease agreement may very well be used as a general reference when structuring a licensor's obligations, ie, the obligation of a lessor to warrant the enjoyment of the leased goods to the lessee with respect to any third party alleging to have some rights over such goods is certainly comparable to a licensor/licensee relationship.

Rights of Licensee

GRE41 The licensee's position in a licence agreement may be compared, to a certain extent, to that of the lessee in a lease contract. The main rights are:

- Warranted enjoyment; and
- The possibility to directly defend patent infringement by any third party.

GRE42 In the case of a third party's claim on the licensed patent, the licensee must be protected and relieved of any judicial action by the licensor.

Obligations of Licensee

GRE43 The primary obligation of the licensee is the payment of the agreed royalty or other form of consideration in exchange for the grant of the right.

GRE44 Obviously, the licensee must comply with all the terms and conditions of the agreement, the breach of which will be a cause of action on the part of the licensor before a court or an arbitration panel, according to articles 288 *et seq* of the Civil Code.

Royalties

GRE45 The licensee must pay a consideration for the licensing of a right. In some cases, such a consideration may have the form of a lump sum; however, most agreements provide for a royalty payment scheme based on a percentage of the receipts for products acquired from the use of a right, or on an account per unit produced, on a percentage of the net sales, or on the licensee's turnover.

Extension and Amendment

GRE46 The right to extend the licence may take the form of a sub-licence in favor of third parties in some way linked to the licensee. Such third parties (sub-licensees) usually benefit from the same terms of the underlying licensor/ licensee agreement.

GRE47 Licensing agreements sometimes exclude the right of the licensee, or require the previous consent of the licensor. Agreements for the licensing of patent rights can be modified by the parties thereto by the same contractual form.

Linkage with Other Intellectual Property Rights

GRE48 Greece has a common scheme and policy among patents, copyrights, trade marks, and utility models.

GRE49 This common link consists of the interest of protecting the intellectual property right and authors' copyright and the supreme interest of the state in the exploitation of a patented invention.

Public Policy

GRE50 The basic principle of public policy consists of the interest of the state in protecting the use and transferability of a right by a patent's owner and holder by imposing on patents a public control (ie, registration of the patent application) to assure that the patented invention may be used and exploited in favor of the community, even when the patent holder does not want or is unable to exploit it, ie, by a compulsory licence, or by expropriation.

Licensing of Trade Marks and Designs

Nature, Definition, and Legislation

GRE51 According to article 1 of Law Number 2239/1994, a trade mark is any sign presented by a graphic design allowing the public to distinguish and recognise the products and services of a company from those of another company. Words, trade names, representations, designs, numbers, sounds, music, and figures may constitute a trade mark.

GRE52 EC Regulation 207/2009 codified the various amendments of EC Regulation 40/1994, which introduced the notion of the Community trade mark.

GRE53 Collective trade marks, intended to warrant the origin, nature, or quality of specific goods or services, are obtainable and may be licensed to manufacturers and/or distributors.

GRE54 In the framework of the Trade Marks Law, designs also are protected. This is due to the fact that the distinction between a trade mark and a design is quite difficult.

GRE55 According to article 3, paragraph 1a, of Law Number 2417/1996 on the Ratification of the Hague Agreement Concerning the International Deposit of Industrial Designs of 6 November 1925, as revised in The Hague on 28 November 1960, and the Complementary Act of Stockholm of 14 July 1967, as amended on 28 September 1979, a ‘design’ or ‘model’ means the outwards visible appearance of the whole or part of a product resulting from the specific features of it and, in particular, the lines, contours, colours, shape, form, and/or materials of the product itself and/or its ornamentation.¹ The legislation relating to designs includes Presidential Decree Number 259/1997, implementing Law Number 2417/1996.

GRE56 Trade marks and designs may be freely transferred or licensed, totally or partially. Attention should be paid to avoid any misleading information or fraud in the qualities or characteristics of the products or services at which the transferred or licensed trade mark or design is used.

GRE57 Trade mark licensing is governed by Law Number 2239/1994. Moreover, contract law principles provided in the Civil Code, articles 36 *et seq*, article 13 of Law Number 2121/1993, and article 12 of Law Number 1733/1987 are applicable. A trade mark licensing agreement may exist even where the registration process of a trade mark has not been completed.

Territorial Scope

GRE58 The Trade Marks Law provides that a trade mark may be licensed exclusively or non-exclusively and for the whole territory of the country or only for a part of it.

¹ Law Number 2417/1996, art 3, para 1a.

GRE59 The condition imposed on the non-exclusive or exclusive license for only a part of the territory is that the licensed trade mark must be used to distinguish products or services similar to those marketed by the licensor or by other licensees in the territory.

Term

GRE60 The Trade Marks Law provides that the protection of a registered trade mark lasts for 10 years. Renewal and extension of the protection period is possible upon the expiration of the initial protection period, and each time for a further 10-year period.

GRE61 The licensing of a trade mark lasts until the expiration of its protection period, applying by analogy what is already provided for on patent licensing.

Rights of Licensor

GRE62 The licensor enjoys the basic right to be paid a royalty or a lump sum depending on the terms and conditions of the licensing agreement.

GRE63 EC Directive 2008/95/EC provides that a clause in the agreement by which the licensor imposes on the licensee quality standards for the trade-marked products and severe controls as to the respective compliance obligation from the part of the licensee, is normally allowed. Finally, a clause barring the licensee from sub-licensing may normally be accepted under Greek contract law and European antitrust law.

Obligations of Licensor

GRE64 The principal obligation of the licensor consists in assuring the quiet enjoyment of the licensed trade mark by the licensee, and in protecting the licensee against claims of third parties.¹

Rights of Licensee

GRE65 Quiet enjoyment of the licensed trade mark is the main right of the licensee. The licensee also has the right to be held harmless and free of any claim initiated by third parties as to the trade mark.

¹ Civil Code, arts 335 *et seq* and 380 *et seq*.

Obligations of Licensee

GRE66 The licensee, apart from the obvious obligation to pay a royalty or other forms of consideration agreed upon in the contract, must comply with the same quality standards that the licensor attaches upon the trade mark for the same kind of products or services.

GRE67 The licensee's failure to comply with such obligations may result in losing the use of the trade mark by the early termination of the licence contract.

Consideration

GRE68 The consideration paid to the licensor for the grant of the trade mark licence is left to the contractual discretion of the parties. The payment of the consideration is made in form of royalties or in a lump sum.

Extension and Amendment

GRE69 The right to extend a licence (ie, mainly by sub-licensing) is left to the parties' agreement. Extension may be excluded by a respective contractual provision or may be agreed upon subject to the previous written consent of the licensor.

GRE70 Generally, a sub-licensee will be subjected to the same terms and conditions as those of the principal licensee, especially with respect to the quality standards of the products or services sub-licensed.

Linkage with Other Property Rights

GRE71 The Trade Marks Law provides that a trade mark registration application cannot be filed if it contains signs or marks infringing someone else's copyright, patent right, or other right of any third party (such as a trade inscription or label).

Public Policy

GRE72 The Trade Marks Law places particular emphasis on avoiding the misleading or deceiving of consumers. A licensor or licensee who, willfully or not,

betrays a consumer's loyalty and good faith in regard to a trade-marked product may suffer loss of the right over the trade mark.

Licensing of Copyright

Nature, Definition, and Legislation

GRE73 Law Number 2121/1993 provides for the licensing of an economic right arising from Intellectual Property Rights.

GRE74 According to Law Number 2121/1993, an exclusive license provides that the holder of the right may not agree on another similar license, unless he elects to withdraw from the use of the prior right.

Territorial Scope

GRE75 Law Number 2121/1993 applies to all Greek creators' works. The licenses are deemed to be in effect in the territory where they were concluded.

Term

GRE76 The licensing of works may follow the time limits given by the parties. When it is not otherwise stated, the duration of such a contract should be limited to five years.

GRE77 Therefore, the author, or his heirs, will be free to transfer, license, or sell the economic rights over a work for as long as the copyright protection exists.

Rights of Licensor

GRE78 The licensor may impose in the agreement terms and conditions at his absolute discretion, (ie, when a contract's consideration is not against public order, mandatory laws, or morality).

GRE79 The licensor, in his capacity of the creator of a work, enjoys some rights and obligations, including warranty obligations.

Obligations of Licensor

GRE80 The licensor (creator) must deliver the work according to the conditions agreed upon in the contract and in an acceptable form and warrant the enjoyment of the transferred rights for the duration of the contract.

GRE81 In the case of a transfer of exclusive rights, there is an implicit prohibition to grant the same licensing right of the work to others, not to compete with the licensee, and not to distribute a similar work in the agreed license territory.

Rights of Licensee

GRE82 A licensee has the right to dispose of the licensed rights in the work and to reproduce freely during the term of the contract.

GRE83 A licensee also has the right of enjoyment of the licensed right. Finally, a licensee has the right to bring action to prevent infringement.

Obligations of Licensee

GRE84 A licensee may not transfer the licensed rights without the licensor's prior consent. He would otherwise be liable to damages under article 926 of the Civil Code.

GRE85 Moreover, a licensee is obliged to reproduce and distribute the work for sale, in conformity with the original copy of the work and according to proper editorial techniques, and pay the agreed royalty.

Royalties

GRE86 The consideration of a licensor will consist of a fixed royalty, unless otherwise agreed, eg, a percentage of the cover price of the published or reproduced work. A lump sum payment also is allowed.

Extension and Amendment

GRE87 The licensee is not allowed to extend or assign the licensed rights to any third party without the licensor's consent. An extension of the contract, however, may very well be agreed upon.

Public Policy

GRE88 Greek copyright law follows the origin theory, which is why licensing was considered to be prohibited until relevant legislation permitted copyright licensing in Greece.

GRE89 The main focus of all relevant legislation is the actual extent to which licensing is allowed, as well as the object of the extension provisions regulating licensing and what they are designed to protect through the infringement provisions.

Regulatory Authorities

GRE90 The Hellenic Copyright Organisation is a legal entity, established by Law Number 2121/1993, along with Presidential Decree 311/1994, Law Number 2557/1997, and Law Number 2819/2000.

GRE91 The main purpose of the Hellenic Copyright Organisation is to protect the authors and the beneficiaries of intellectual property rights, to implement Law Number 2121/1993 and the respective international legislation, to supervise the collective protection societies, and to undertake drafting of legislation on matters pertaining to copyright and related rights.

GRE92 In the context of its responsibilities, the Hellenic Copyright Organisation deals with any issue in general that might occur in the field of copyright and related rights and represents Greece before the competent international organisations, including the European Union.

GRE93 The Industrial Property Organisation was established in 1987 by virtue of Law Number 1733/87. Among its purposes is to contribute to the technological and industrial development of Greece, providing important services in the industrial property field.

GRE94 The Industrial Property Organisation protects inventions in Greece, conferring patents, utility model certificates, European patent translation filing certificates, and other protection titles. Moreover, it protects the industrial designs and models in Greece, conferring the respective protection certificates.

GRE95 The Industrial Property Organisation functions as a reception office for registering patents and industrial designs abroad and provides technological information on technical, bibliographical, and other data on patents in Europe,

the United States, and Japan. Finally, registration of Technology Transfer Contracts is made with the Industrial Property Organisation.

Conclusion

GRE96 On 24 May 2011, the European Commission unveiled a wide-ranging strategy to modernise intellectual property rights in the European Market.

GRE97 Among those initiatives are proposals for an easier licensing system for the so-called ‘orphan works’, a new regulation to reinforce custom actions in fighting trade of intellectual property infringing goods and a new proposal to reinforce the European Observatory on Counterfeiting and Piracy.